



LOCAL GOVERNMENT (PLANNING APPEALS)

No. 63 of 1975

ANALYSIS

1. Short title and citation.
2. Interpretation:
 - Notice of applications for planning approval.
 - Appeals against planning decisions.
 - Procedure on appeals.
 - Effect of appeal provisions on certain planning schemes.



AN ACT to amend the Local Government Act 1962.

[11 December 1975]

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1—(1) This Act may be cited as the *Local Government (Planning Appeals) Act 1975*. Short title and citation.

(2) The *Local Government Act 1962*, as subsequently amended, is in this Act referred to as the Principal Act.

2 After section 733 of the Principal Act the following sections are inserted:—

Interpretation.

“ 733A For the purposes of this section and sections 733B, 733C, 733D, and 733E, in relation to any land subject to a planning scheme under this Division—

‘ Appeal Board ’ means the Interim Planning Appeal Board constituted under section 734 (19);

‘ development ’ means—

- (a) the carrying out of building, engineering, mining, or other operations in, on, over, or under the land;
- (b) the demolition, in whole or in part, of any building or other works on the land;
- (c) the making of any material change in the use of the land or any buildings or works thereon; or
- (d) the carrying out of any procedure or the doing of any other thing that, by virtue of any provision in the planning scheme, is treated as development for the purposes of the scheme;

‘ planning appeal ’ means an appeal under section 733c;

‘ planning approval ’ means any permit, approval, or consent required by the planning scheme to be issued or given by a corporation in respect of the development of any land subject to the scheme.

Notice of applications for planning approval.

“ 733B—(1) This section applies to applications for planning approvals of any of the following kinds:—

- (a) Planning approvals of any kind that the Minister has by order declared to be planning approvals to which this section applies;
- (b) Planning approvals of any kind that the corporation has power to grant only in pursuance of a power conferred by the planning scheme on the corporation to relax or modify the provisions of the scheme in their application to any land;
- (c) Planning approvals for development of any kind that under the planning scheme the corporation has a discretion to refuse or permit.

“(2) For the purposes of this section a power conferred by a scheme to impose conditions or restrictions in any planning approval shall not of itself be regarded as conferring a discretion to refuse or permit development.

“(3) An application for a planning approval to which this section applies—

- (a) shall not be entertained by the corporation unless the corporation is furnished with a copy of a notice of the application, in such form as may be prescribed, and with such evidence as may be prescribed that that notice has been published in a local newspaper circulating in the locality in which the land to which the application relates is situated and has been posted in a conspicuous position on the land; and
- (b) shall not be determined by the corporation before the end of the period of 14 days beginning with the date appearing from the evidence accompanying the application to be the date on which the notice was published or posted as mentioned in paragraph (a), whichever last occurred.

“(4) Any such notice as is mentioned in subsection (3) (a) shall (in addition to any other matters required to be contained therein) name a place where a copy of the application, and of all plans and other documents submitted therewith, will be open to inspection by the public at all reasonable hours during a period of 14 days.

“(5) In determining an application for a planning approval to which this section applies the corporation shall have regard to any representations relating to the application that were made during the period of 14 days beginning on the relevant date, or such further period, not exceeding 14 days, as the corporation may allow.

“(6) For the purposes of subsection (5) the ‘relevant date’ is the date appearing from the evidence accompanying the application as required by paragraph (a) of subsection (3) to be the date on which the notice of the application was published or posted as mentioned in that paragraph, whichever last occurred.

“(7) Nothing in subsection (5) shall be construed as preventing the corporation in dealing with an application for a planning approval from acting of its own knowledge or from considering any other representations or matters that it may consider relevant.

“(8) Where the corporation, on an application for a planning approval to which this section applies, grants or refuses a planning approval it shall serve notice of its decision on the applicant and shall either—

- (a) publish notice of the decision in a local newspaper circulating in the locality in which the land to which the application relates is situated; or
- (b) serve notice of the decision on each person who has made any such representations in relation to the application as are referred to in subsection (5).

“(9) It is sufficient if the notice published for the purposes of subsection (8) (a) specifies—

- (a) the land to which the decision relates; and
- (b) the name of the person who made the application for the planning approval to which the decision relates,

and names a place where a copy of the application, and of all plans and other documents submitted therewith, and a copy of the decision of the corporation thereon, will be open to inspection by the public at all reasonable hours during the period of 21 days following the publication of the notice.

Appeals against
planning
decisions.

“733C—(1) Where the corporation refuses to grant a planning approval or grants a planning approval subject to conditions or restrictions, the applicant may, in accordance with section 733D, appeal to the Appeal Board against the decision of the corporation.

“(2) Where the corporation has granted a planning approval any person who, in respect of the application for that planning approval, has made such representations as are referred to in section 733B (5) may, in accordance with section 733D, appeal against the grant of the approval.

“(3) Where an appeal is brought under this section, the Appeal Board may allow or dismiss the appeal, or may reverse or vary any part of the decision of the corporation, whether the appeal relates to that part thereof or not, so that the effect of its decision is that which it is of opinion should have been the decision of the corporation on the application to which the appeal relates.

“(4) The Appeal Board’s determination of an appeal under this section shall be given effect to by the corporation.

Procedure on
appeals.

“733D—(1) A planning appeal shall be instituted by lodging a notice of appeal with the clerk of petty sessions for the municipality.

“(2) A planning appeal shall not be instituted more than 21 days after—

- (a) if the corporation publishes notice of the decision to which the appeal relates in accordance with section 733B (8) (a), the day on which that notice is so published; or
- (b) in any other case, the service of a notice of the decision on the person instituting the appeal.

“(3) A notice of appeal under this section shall identify the decision in respect of which the appeal is instituted and specify the person instituting the appeal, and shall set forth briefly the grounds of the appeal, and shall be accompanied by a fee of five dollars.

“(4) In the proceedings on a planning appeal in respect of an application for a planning approval, the corporation, the applicant, and the person bringing the appeal are entitled to be heard, but the Appeal Board may, if it thinks fit, allow any other person to be heard.

“(5) The clerk of petty sessions of the municipality shall, in such manner as the chairman of the Appeal Board may direct, notify all persons entitled to be heard in the proceedings on a planning appeal of the time and place at which the appeal will be heard.

“(6) Where any person entitled to be heard by the Appeal Board on a planning appeal does not, after being warned by the clerk of petty sessions for the municipality of the time and place of the hearing, appear to be heard, the Board may proceed with the hearing in his absence.

“(7) On a planning appeal the Appeal Board may inform itself on the matter the subject of the appeal in such manner as it thinks fit and, subject to this Division, the procedure on the appeal shall be as the Board may direct.

“(8) If the expenses of a party to a planning appeal have been caused or increased by unreasonable or improper conduct by any person, the Appeal Board may order the latter to pay the former such sum by way of costs as it may fix; and any sum so ordered to be paid may be recovered as a debt in any court of competent jurisdiction.

“733E—(1) Any planning scheme, whether made before or after the commencement of this section, has effect subject to the provisions of sections 733A, 733B, 733C, and 733D, and in particular so much of the provisions of such a scheme as are inconsistent with those provisions are of no effect.

Effect of appeal provisions on certain planning schemes.

“(2) Without prejudice to the generality of the provisions of subsection (1) any provision in a planning scheme—

- (a) requiring notification or publication of an application for a planning approval; or
- (b) giving a right of appeal in respect of any decision of a corporation,

shall be deemed to be inconsistent with the provisions of the sections referred to in that subsection.”.